

# **Exhibit 24**



## SOCIAL SECURITY

Refer to:

S9H: SSA-2019-003618

x/ref SSA-2019-002259

September 24, 2019

Mr. Michael J. McDougall  
Akin, Gump, Strauss, Hauer, & Field LLP  
[mmcdougall@akingroup.com](mailto:mmcdougall@akingroup.com)

Dear Mr. McDougall:

This letter is in response to your August 30, 2019 appeal of Ms. Mary Ann Zimmerman's August 19, 2019 decision to charge you a fee to process your Freedom of Information Act (FOIA) appeal for a specified number of deceased individuals' Supplemental Security Income Displays (SSID), including the full computation history and payment history fields (case SSA-2019-002259). Per your appeal of the fee applicable to SSA-2019-002259, you state that the information you are requesting is for a program purpose under the Social Security Act (Act) because the information is "required in order to verify the accuracy of information provided by Medicare to the hospitals on whose behalf [you] filed this request."

After further review of Ms. Zimmerman's decision, I am upholding the decision that your request is for non-program related purposes. We consider a request to be program related if the information must be disclosed under the Social Security Act (Act) (see 20 C.F.R. § 402.170(a)(1)). For example, section 205(c)(2)(A) of the Act (42 U.S.C. § 405(c)(2)(A)) requires that we provide certain information upon request to a worker, her or his legal representative, her or his survivor, or the legal representative of the worker's estate. We also consider a request to be program related if the requester indicates the needed information will be used for a purpose which is directly related to the administration of a program under the Social Security Act (see 20 C.F.R. § 402.170(a)(2)). The major criteria we consider in deciding whether a proposed use is so related are as follows:

- (1) Is the information needed to pursue some benefit under the Act?
- (2) Is the information needed solely to verify the accuracy of information obtained in connection with a program administered under the Act?
- (3) Is the information needed in connection with an activity which has been authorized under the Act?
- (4) Is the information needed by an employer to carry out her or his taxpaying responsibilities under the Federal Insurance Contributions Act or section 218 of the Act?

Your FOIA request does not pass several of the abovementioned criteria. I understand your firm is representing hospitals before the Department of Health and Human Services, Provider Reimbursement Review Board. The SSID information you are requesting is needed for your firm to challenge the accuracy of the Medicare/Supplemental Security Income (SSI) percentages

computed by the Centers for Medicare & Medicaid Services (CMS) for specified periods. While we recognize that CMS' decisions under section 1886 of the Act is part of administration of Medicare (Title XVIII of the Act), the information that you are requesting under the FOIA is not related to CMS' administration of Medicare Disproportionate Share Hospital (DSH), i.e., your request is overly broad.

Under an Information Exchange Agreement (IEA #10038), SSA provides CMS a file containing an individual's SSI eligibility for a 42-month period. SSA does not provide CMS the level of information that you are requesting to determine Medicare DSH, i.e., "the full SSID with the *full* computation and payment history data/field for the dates specified." Since CMS does not request the level of detail that you are seeking from SSA to make decisions under section 1886 of the Act, we do not believe that the information you are requesting is necessary for the administration of that section of Medicare; therefore, your request is for a non-program purpose.

Even if SSA accepted your position that your request is for a program purpose, the agency could still seek reimbursement from you under 20 C.F.R. § 401.170(b). Under the agency's *Touhy* regulations, the agency recognizes that when a request for records or information is sought in a legal proceeding, the agency will seek reimbursement as prescribed in 20 C.F.R. § 402.155 through 20 C.F.R. § 402.185, as appropriate. 20 C.F.R. § 402.170(b) recognizes that SSA may charge a request for information with a program purpose if the agency determines that the request is for "more detailed information." In those instances, the agency will use the fee schedule in 20 C.F.R. § 402.165. Under the FOIA, you are requesting detailed SSI records that go well beyond the information that CMS uses to administer section 1886 of the Act. Thus, even if the agency accepted your position that your request is for a program purpose, the agency could still seek reimbursement from you in accordance with the fee schedule set forth in 20 C.F.R. § 402.165.

We have received your payment for the processing of SSA-2019-002259. **We will process your payment if we do not receive a response stating otherwise by ten business days from the date of this letter.**

This is the agency's final decision in this matter. You may contact our FOIA Public Liaison if you have questions regarding the final decision. Our FOIA Public Liaison is available by email at [FOIA.Public.Liaison@ssa.gov](mailto:FOIA.Public.Liaison@ssa.gov); by phone at 410-965-1727, by choosing Option 2; or facsimile at 410-966-0869.

If you still believe the decision is incorrect, you may seek review in a United States district court. You may also contact the Office of Government Information Services (OGIS) for mediation and dispute resolution services. OGIS is an entity outside of the Social Security Administration. Using OGIS services does not affect your right to pursue litigation.

You may contact OGIS in any of the following ways:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road – OGIS  
College Park, MD 20740-6001  
E-mail: [ogis@nara.gov](mailto:ogis@nara.gov)  
Telephone: 202-741-5770

Fax: 202-741-5769  
Toll-Free: 1-877-684-6448

Sincerely,

A handwritten signature in black ink, reading "Matthew D. Ramsey". The signature is fluid and cursive, with a long horizontal stroke extending from the end.

Matthew D. Ramsey  
Executive Director  
Office of Privacy and Disclosure

CC: Christopher Keough  
Akin, Gump, Strauss, Hauer, & Feld LLP  
[ckeough@akingump.com](mailto:ckeough@akingump.com)